

**REMARKS**

**I. Status of the Claims**

Claims 1-36 are pending. By this amendment, claims 1, 22, and 36 have been amended. Support for this amendment can be found in the originally-filed specification and claims, for example, on page 10, paragraph [0024], stating that  $\alpha$ -thio carboxylic acids are within the scope of the disclosed invention. Applicants note for the record that the term " $\alpha$ -thio carboxylic acid" encompasses both thioglycolic acid and mercapto ( $C_4$ - $C_6$ ) dicarboxylic acids having a sulfhydryl functional group on a carbon atom alpha to one or both of the carboxy acid groups. No new matter has been added by these amendments.

**II. Obviousness-Type Double Patenting Rejection**

The Examiner has rejected claims 1-36 under the judicially-created doctrine of obviousness type double patenting over claim 1-9, 16-23, 27-47, 54-61, and 65-79 of U.S. Patent No. 6,435,193 to Cannell et al. ("Cannell"). The Examiner alleges that the claims are an obvious variation over the claims of Cannell, "differing only in that the instant claims recite an activating composition comprising at least one complexing agent." Office Action at 3.

Applicants disagree with the Examiner. The instant claims differ not only in that they recite a complexing agent comprised in an activating composition, but also in that, unlike Cannell, they do not recite a cation exchange composition. See, e.g., Cannell at Claim 1. Claim 1 of Cannell recites an activating agent containing a cation exchange composition and claim 17 of Cannell recites the further inclusion of an additional

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ingredient, *i.e.*, (*in addition to* the cation exchange composition) at least one complexing agent.

Thus, Cannell simply does not teach or suggest that the complexing agent may be substituted for the cation exchange composition, as the Examiner's rejection implies. Instead, Cannell makes a point to distinguish between cation exchange compositions and complexing agents. For example, column 3, line 60 to column 4, line 8 describes examples of possible cation exchange compositions. Subsequently, column 5, line 14 to column 6, line 39 describes examples of possible complexing agents. Cannell makes clear that the two are not the same, nor are they obvious variants over each other. This point alone distinguishes the two sets of claims sufficiently to require that the obviousness-type double patenting rejection be withdrawn. In sum, the Examiner's contention that the instant claims would have been obvious because "Cannell clearly teaches a composition for lanthionizing keratin fibers that comprises a complexing agent . . ." is incorrect and cannot be sustained.

As the Examiner has failed to establish that the scope of the instant claims is obvious over the scope of the claims in Cannell, Applicants respectfully request withdrawal of the rejection based upon obviousness-type double patenting.

### **III. Terminal Disclaimer**

While the Examiner has not issued a rejection over U.S. Patent No. 6,562,327 to Nguyen et al., in the interest of advancing prosecution, Applicants submit herewith a Terminal Disclaimer thereover. This Terminal Disclaimer disclaims the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of U.S. Patent No. 6,562,327.

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**IV. Conclusion**

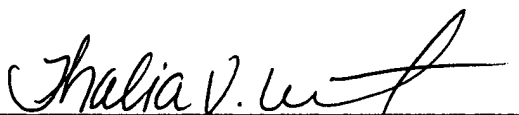
In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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